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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|------------------------|---------------------|------------------|
| 09/682,394 | 08/29/2001 | George Davidson | 46522-12 | 5694 |
| 23971 7590 03/18/2008 BENNETT JONES C/O MS ROSEANN CALDWELL 4500 BANKERS HALL EAST 855 - 2ND STREET, SW CALGARY, AB T2P 4K7 CANADA | | | | |
| EXAMINER WEISBERGER, RICHARD C | | | | |
| ART UNIT 3693 | | PAPER NUMBER | | |
| MAIL DATE 03/18/2008 | | DELIVERY MODE PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/682,394

Applicant(s)

DAVIDSON ET AL.

Examiner

Richard C. Weisberger

Art Unit

3693

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/20/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No./Mail Date: _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Upon further review of the claims, there are several issues of infiniteness requiring clarifications and/or amendments.

The multiple if statements make the language somewhat confusing as it is not clear if all the limitations are requires in the method. The examiner is interpreting the claims to include ALL of the limitations. That is none are optional.

The step of displaying to the seller any offers to buy currently posted by potential buyers of the number of tickets in the price zone of the tickets that the seller desires to sell, the display including a specified selling price, a second transaction fee, and a courier pickup fee corresponding to each offer to buy is confusing. It is not clear which each of the courier fees corresponds to (is a courier fee the same as a shipping fee?) Are both the buyer and the seller each bidding on their courier fees? Moreover, the buyer has only previously posted the number of tickets required and a price zone. Thus it is not clear where the displayed courier and transaction fees emanated, whether each is inherent in the price zones, or if these fees are included in the matching algorithm for the initial screening.

The step of --if the buyer wishes to post an offer to buy the desired number of tickets at a specified price, then preauthorizing a charge to a credit card account of the buyer for the specified buying price and the first transaction fee (7th paragraph of claim 1 and corresponding paragraph of claim 2) in that it fall beneath the scenario where a purchase by a buyer from a group of sellers. Here we have no purchase, just a buyer posting an offer to buy and an preauthorized charge along with a transaction fee. Moreover, since there is a separate transaction fee for each offer of sell, how is the preauthorized charge determined.

The sep of --if the seller wishes to accept one of the currently posted offers to buy, then charging a courier pickup fee to a credit card account of the seller for picking up the tickets -- is confusing. Is the courier pick-up fee related to fee charged to the buyer in paragraph 10.

Similarly the step of -- if the seller wishes to post an offer to sell the desired number of tickets at a specified price, then preauthorizing a courier pickup fee to a credit card account of the seller for picking up the tickets, the preauthorized fee to be charged upon acceptance of the offer by one of the potential buyers (13 paragraph of claim 1 and corresponding paragraph of claim 2) is confusing in that it falls beneath the case where a sale by the seller to a number of buyers. Here we have no sale, just a offer to sale.

Lastly the step of -- in both cases the purchase and sale may be completed by charging the preauthorized charge to the buyer and crediting the amount so charged to the credit card of the

Art Unit: 3693

seller less a second transaction fee – is vague and indefinite with respect to whether this step is optional (note "may"). Moreover, it is not clear if the transaction fee corresponds to the previously charged transaction fee.

The applicant is encouraged to contact the examiner to resolve these issues.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Orwall: Online: Ticket Scalpers find a home on the Web. .

The prior art teaches that it is well known to use online auctions like eBay for reselling event tickets. For the reasons set forth above the origin and nature of the courier fees is unclear. For the purposes of this rejection and courier fees are assumed to be universally applied by the intermediary agent to one or both sides

Art Unit: 3693

of the transactions. The prior art fails to teach a two way bidding process, initiated with bids to buy and offers to sell. For the purposes of this rejection the so called bidding zone can read in a single price and a single ticket. It is well known in the art to use limit orders in the field of auctions and it would have been obvious for one skilled to have included a buy side bid in the ebay model (the ebay model includes unsolicited offers to sell). Those skilled in the art would have at their disposal all methods of electronic auctions and electronic matching when designing an electronic event ticket exchange. Official Notice is taken that these prior art system include all the bidding/offering steps claimed by the applicant. The prior art fails to teach or expressly include the posting of courier pickup fees. It is obvious for one skilled in the art to display courier and transaction fees to one or both sides of the transaction as motivated by the need to provide the true cost of the transaction of the buyer and/or seller. The exclusion of shipping and handling fees from a posted bid and/or offer is conventional in the art of commerce. The decision of when to post and or preauthorize these fees is matter of design choice. For at least these reason the claims are rejected.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard C. Weisberger whose telephone number is 571 272 6753. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571 272 6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3693

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard C Weisberger/
Primary Examiner, Art Unit 3993

Richard C Weisberger
Primary Examiner
Art Unit 3993